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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,955	02/20/2002	Robert Swift	3728-0103P	3035
2292	7590	08/10/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/077,955	SWIFT ET AL.
	Examiner	Art Unit
	PAUL T. CHIN	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 May 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5,7-12,21,22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,7-12,21,22 and 24-26 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

#### DETAILED ACTION

1. Applicant's proposed amendment filed May 24, 2005, and the arguments presented therewith have been fully considered. In the personal interview, the Examiner states that if applicant adds the subject matter of claim 4 to claim 1, the proposed claim 1 appears to be allowable (Note that the examiner does not state that if applicant adds the subject matter of claim 4 to claim 8). However, an allowance conference (including the examiner, a primary examiner, and a Supervisor Patent Examiner) was held on August 1, 2005 and the conferees made a decision that the subject matter of provided claims are not allowable. Therefore, upon further consideration, a non-final office action follows as below.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 5, 7-12, 21, 22, and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 8 are vague and indefinite. For instance, applicant recites "a hydraulic device" (in line 1) and later recites "wherein the device is a hydraulic dumpster" in line 17. It is confusing as to whether applicant claiming "a hydraulic device" or "a hydraulic dumpster". Applicant recites "a body portion" and "a first member connected to the body" in lines 3 and 5, and later claim that "the first member is a door on the dumpster", which is confusing. Moreover, applicant recites "a hydraulic system" in line 1 of claim 8 and later recites "wherein the device is a hydraulic dumpster" in line 14. It is unclear as to the recited "device" refers to "a hydraulic system".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,6,7, and 21, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (5,359,942) (see PTO-892).

Ward (5,359,942) discloses a device comprising a body portion (21) (Fig. 1); a hydraulic device (55) connected to the body portion; at least a first member (47, 48) movable by hydraulic pressure applied to the cylinder; a hydraulic pump (41); a power source, a battery (39); a controller (40) comprising a receiver, or an antenna (87) (Col 9, lines 1-19) for receiving a control signal and having a manually operated control switch (see Fig. 4, and Col 10, lines 60-66) for transmitting power to the pump whereby the hydraulic motor of the hydraulic device (55) may be remotely controlled by the control signal (operator control station 85) (see from Col 9, line 1, to Col 10, line 66). The device is a hydraulic dumpster, the first member is a door (47,48), and the hydraulic cylinder (55) opens or closes the door (47,48) (Fig. 2) to dump contents such as road bed ballast (Col 4, lines 7-12) from the dumpster.

It is pointed out that Ward's device (5,359,942) contains all the structural elements as recited in claim 1 and the device is capable of being suspended from a crane to be moved to another location or to be repaired.

Re claim 2, Ward's device (5,359,942) shows an enclosure (25) and a mount (28,30) having a planar portion and two rails (see Fig. 2)

Re claim 3, a valve (70,90) is shown as the diagram 5.

Re claim 7, the pump (41) comprises a tank or reservoir (8) and a motor (36,38) (Fig. 3).

Re claim 21, Ward's device (5,359,942) shows the manually operated control switch(s) (97,97) (92) (see Fig. 4) comprise open, closed, and off positions.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward's device (5,359,942) in view of Bounds (Re. 36,685).

Ward's device (5,359,942), as presented in section 5 above, does not show that the enclosure is being made of a metal. However, Bounds (Re. 36,685) discloses a discharged opening (11) comprising a metal plate (27) (Fig. 3, Col 6, lines 38-50).

Accordingly, it would have been obvious to those skilled in the art to provide the enclosure (25) of Ward's device (5,359,942) to be made of metal as taught by Bounds (Re. 36,685) to provide stiff and reliable enclosure.

8. Claims 1-3,5,7-12, 21,22, and 24-26, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art in view of Fathauer (3,858,728) (see Paper No. 5).

The prior art discloses a hydraulic system and a dumpster for use when suspended from a crane. However, the prior art does not show a remote control device. However,

Fathauer (3,858,728), as presented in section 8 above, a power source (64); a controller having a receiver (66) for receiving a control signal; a wireless transmitter (83) for remotely transmitting the signal to the receiver; a switch (Fig. 8) (Col 6, lines 1-17); a valve (41-43) for controlling the direction of the flow of the fluid; and an electric motor (60) for driving the hydraulic pump. Accordingly, it would have been obvious to those skilled in the art to provide a remote control device on the admitted prior art as taught by Fathauer's device (3,858,728) to control remotely without requiring cables.

***Response to Arguments***

9. Applicant's arguments on the Hale et al. (3,647,255), Hale et al. (3,647,255) in view of Prescott et al. (5,624,237), and Hale et al. (3,647,255) in view of Bounds (Re. 36,685), have been fully considered and they are persuasive. However, the argument on Ward (5,359,942) is not persuasive.

Applicant recites a hydraulic device, which is adapted to be operated", "a body portion adapted for suspension from the crane", and "to operate the pump when the hydraulic device is suspended from the crane". Note that applicant does not positively recited the intended use and fail to recite positively in the body of the claims. Ward's device (5,359,942) is being capable of "being adapted to be operated", "a body portion adapted for suspension from the crane", and "to operate the pump when the hydraulic device is suspended from the crane".

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
Art Unit 3652